

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW MEXICO

3 STATE OF NEW MEXICO ex rel.

4 STATE ENGINEER,

5 Plaintiff,

6 vs.

NO: CIV-69-7941 MV/LFG

7 ROMAN ARAGON, et al.,

8 Defendants.

9 Transcript of Closing Arguments before The Honorable
10 Lorenzo F. Garcia, United States District Judge, held in
11 Albuquerque, Bernalillo County, New Mexico, commencing on
12 Tuesday, February 12, 2013, at 9:02 a.m. and concluding at
13 10:15 a.m. Proceedings recorded by mechanical stenography;
14 transcript produced by computer-aided-transcription.

15 For the Plaintiff:

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1 (Transcript of closing arguments.)

2 (Court stood in recess at 9:40 a.m. and resumed at
3 10:00 a.m. as follows:)

4 (Ms. Singer sitting at counsel table now.)

5 THE COURT: Mr. Ortega, as the litigant with the
6 burden of proof in this case, you may proceed first with your
7 closing.

8 MR. ORTEGA: Your Honor, in the great scheme of
9 worldly things and a lesser thing of this adjudication this
10 issue of the date is just dust on the scales of considering the
11 whole scheme. Whether I wind up with a date of 1600, 1599, or
12 1598, it really doesn't matter as far as water's concerned.

13 THE COURT: That has been my impression about this
14 litigation. I think it has more to do with bragging rights as
15 to which was the first settlement than who -- than the
16 determination of a priority in terms of the effect on water.

17 MR. ORTEGA: When I need water, I go to my creator.
18 I don't go to the State or to the federal government.

19 I've spent time on my knees, both yesterday morning
20 and this morning, and I went to the supreme judge of the
21 universe. He was there in 1598. He knows exactly what
22 happened. So I asked him to help the Court make the right
23 decision, so, like I said, whether I receive 1600, 1599 or '98,
24 or even 1714, in the great scheme of things, it has nothing to
25 do with the water. I have no choice but to accept the decision

1 of the Court.

2 My cause for the last two years has been borne by
3 myself and a few others, including printers and everything,
4 paper that I've needed, time, books. I don't have the luxury
5 of the federal court or the State to even hire lawyers or
6 expert historians or expert translators. So, as I said, I'm at
7 the mercy of the Court.

8 I would hope that the Court's decision would be
9 August 11th, 1598, for the land that my wife and I are stewards
10 of.

11 And so the decision now is in the hands of the Court.

12 THE COURT: Thank you, Mr. Ortega.

13 Mr. Newville.

14 MR. NEWVILLE: May it please the Court?

15 THE COURT: Counselor.

16 MR. NEWVILLE: There are two central factual
17 questions involved in this matter. First, where did Onate
18 establish his colony when he first arrived in New Mexico? And,
19 second, where was the location of the ditch that was
20 constructed in 1598 to serve the city of San Francisco?

21 The evidence with respect to the first question is
22 substantial and unequivocal. Numerous documents indicate that
23 the colonists arrived at what they called the Pueblo of San
24 Juan, and they conducted numerous activities there. They
25 constructed a church that they called San Juan Bautista. In

1 early 1599, Onate and various officials prepared a number of
2 documents there, documents that expressly state that they were
3 prepared at the Pueblo of San Juan or San Juan Bautista.

4 During that time, there is a single reference to the
5 Pueblo of San Gabriel. This is in the document that assigned
6 the various Tegua Indian pueblos to one of the Franciscan
7 friars the Act of Obedience prepared at San Juan Bautista.
8 That document is signed "This Friar," both the Pueblo of San
9 Gabriel and what the document described as "This Pueblo of San
10 Juan."

11 The Act of Obedience clearly shows that Onate and the
12 colonists did not consider these two Indian pueblos to be a
13 single unit or place. They are distinct and different places,
14 and the document describes them as such.

15 In the water rights adjudication process, where a
16 community is located is very important. When a state
17 undertakes historical research in order to make a determination
18 of when irrigation began on a particular tract of land or in a
19 particular community, there rarely is any specific information
20 on when a ditch was constructed or when an area was first put
21 under irrigation. The information available is usually limited
22 to information on occupation. When an area or community was
23 established refers to occupied.

24 Because early communities in New Mexico were, in
25 essence, subsistence communities that depended upon

1 agriculture, given an available water supply, the State will
2 presume irrigation activity quickly follows actual occupation.

3 In this case, the historical documents that were
4 created at the time the colonists first arrived in New Mexico
5 and shortly thereafter show that the settlement was located at
6 San Juan. Only later, when documents are created in the summer
7 of 1600, do these documents indicate any occupation of the
8 Pueblo of San Gabriel, which was located near the Ortiz lands.

9 The evidence showing the occupation of San Gabriel in
10 the summer of 1600 and the fact that this is where the
11 colonists were found to be located when the relief expedition
12 arrived in December of 1600 forms the basis for the State's
13 offer to recognize the priority date of 1600 for the Ortiz
14 water rights.

15 The second question that I've described, the location
16 of the acequia that was constructed in 1598, is more difficult,
17 and the specific location of that acequia is uncertain. What
18 is clear is that this acequia was constructed at the time the
19 colonists were at San Juan.

20 Also, the acequia was intended to serve a place
21 called San Francisco, a new city that was said to be under
22 construction. The historical documents that describe the city
23 of San Francisco and assign that place to one of the Franciscan
24 friars shows that it also was a distinct and different place
25 from the Pueblo of San Juan or the Pueblo of San Gabriel.

1 Was this city ever constructed or completed? No. As
2 the historical documents themselves indicate, in the testimony
3 by Horta given in 1601, the colonists refused to build it.

4 Dr. Baxter testified that, based on his examination
5 of the historical record sometime after the spring of 1599, the
6 colonists moved their settlement from the Pueblo of San Juan to
7 the Pueblo of San Gabriel across the river. The reasons for
8 this move are not completely clear. The move itself is not
9 described in the historical record.

10 What is apparent is that the colonists refused to
11 construct a new city and that Onate abandoned his intent to
12 construct a new city separate from the Indian pueblos at a
13 location that would not interfere with the existing uses of
14 their land. Instead, the colonists moved into the existing
15 pueblo structures at San Gabriel and remodeled those structures
16 to suit their purposes. Colonists also constructed a second
17 church at San Gabriel, a church called San Miguel.

18 Mr. and Mrs. Ortiz irrigate their land from the
19 Acequia de Chamita, a ditch that has its point of diversion on
20 the north side of the Rio Chama. No evidence has been offered
21 to show a connection between the Acequia de Chamita and the
22 ditch that was constructed by the colonists in 1598. Any
23 conclusion between the Acequia de Chamita and the ditch
24 constructed in 1598 rests on speculation or a denial of the
25 evidence that the colonists did not occupy the Pueblo of

1 San Gabriel until sometime after the spring of 1599. By that
2 time, the ditch constructed in 1598 was already in existence.

3 Dr. Baxter testified in his -- that in his opinion
4 the ditch constructed in 1598 was located near the Pueblo of
5 San Juan on the east side of the Rio Grande. This is entirely
6 logical. When the work on the ditch constructed in 1598 took
7 place, Onate and the colonists were at the Pueblo of San Juan.
8 The historical documents say this. Also, the ditch that was
9 constructed at the time -- at that time was intended to serve
10 what Onate hoped would be a major urban center. It was
11 intended to serve the municipal needs of a capital city of the
12 kingdom on par with the kingdom of new Spain.

13 As Dr. Baxter has described, Onate had enormous
14 ambitions when he came to New Mexico. He had been involved in
15 the settlement of San Luis Potosi, a very large and successful
16 mining community. Onate apparently hoped to duplicate that
17 success here in New Mexico and become a leader of a province
18 that answered only to the Council of the Indies and to the king
19 of Spain. In selecting a location for the intended capital
20 city, the large unoccupied area near the Pueblo of San Juan
21 represented a favorable location to establish that city.

22 And the Spanish occupation of those areas would not
23 intrude upon the settlements and fields of the pueblo Indians,
24 which was a requirement under the law for the establishment of
25 new settlements at that time. The so-called Law of the Indies.

1 However, this is not how events played out. There
2 were no rich discoveries of minerals. The colonists in large
3 part were discontented, and they even deserted the colony at
4 one point en masse. Onate himself had abandon his dream of a
5 great new city and he, instead, moved the colony into an
6 existing pueblo across the river from San Juan and made this
7 place the capital of the new colony.

8 It is not necessary that the Court determine at this
9 point whether there is a particular ditch on the east side of
10 the Rio Grande near San Juan that can trace its history to the
11 ditch constructed by the Spanish colonists in 1598. There is,
12 simply, insufficient information available at this time to make
13 this determination.

14 At this time, the State asks only that the Court
15 recognize that there is no evidence to show a connection
16 between the Acequia de Chamita and --

17 THE COURT: Mr. Newville, because you're reading
18 portions of your closing, let me ask you to slow down just to
19 ensure that we get an accurate record.

20 MR. NEWVILLE: Okay. Let me start --

21 It's not necessary that the Court determine at this
22 point whether there is a particular ditch on the east side of
23 the Rio Grande near San Juan that can trace its history to the
24 ditch constructed by the Spanish colonists in 1598. There is,
25 simply, insufficient information available to make this

1 determination.

2 At this time, we ask only that the Court recognize
3 that there is no evidence to show a connection between the
4 Acequia de Chamita and the ditch that was constructed in 1598
5 and that Mr. and Mrs. Ortiz have failed to produce evidence
6 showing that irrigation on their land began earlier than the
7 summer of 1600.

8 Thank you.

9 THE COURT: Thank you, Counselor.

10 Mr. Ortega, as, again, the proponent with the burden
11 of proof, unlike the State, you get to open and close, so you
12 have another opportunity to make any comments based on the
13 defendant's -- excuse me -- based on the plaintiff's closing.

14 MR. ORTEGA: Your Honor, my one line is, let the
15 evidence speak.

16 THE COURT: Thank you, Mr. Ortega.

17 And, also, I extend thanks to you for having
18 requested divine intervention in assisting the Court in
19 reaching a ruling in this case.

20 And I also wish to extend compliments to you,
21 Mr. Ortega. I've been a judge for 36 years. I have handled
22 many pro se litigant cases, and without a doubt you are the
23 best, most well-prepared pro se litigant who's appeared in any
24 court that I have officiated in. My compliments to you for
25 your presentation.

1 The matters have been submitted, they will be taken
2 under advisement. The Court has received the proposed findings
3 and conclusions and will issue a decision as promptly as
4 possible.

5 Thank you for your presentations.

6 We are in recess.

7 (Court stood in recess at 10:15 a.m.)
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UNITED STATES OF AMERICA

DISTRICT OF NEW MEXICO

I, Danna Schutte Everett, RPR, CCR, CRR, Official Court Reporter for the State of New Mexico, do hereby certify that the foregoing pages constitute a true transcript of proceedings had before the said Court held in the City of Albuquerque, New Mexico, in the matter therein stated.

In testimony whereof, I have hereunto set my hand on this 12th day of February, 2013.

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February 12, 2013, State of NM vs. Ortega, e t al.

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